

American University Washington College of Law

## Digital Commons @ American University Washington College of Law

---

Joint PIJIP/TLS Research Paper Series

---

9-2010

### Flouting the Elmo Necessity and Denying the Local Roots of Interpretation: "Anthropology's" Quarrel with ACTA and Authoritarian IP Regimes

Alexander S. Dent

*George Washington University*, [asdent@gwu.edu](mailto:asdent@gwu.edu)

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/research>



Part of the [Intellectual Property Law Commons](#), and the [International Trade Law Commons](#)

---

#### Recommended Citation

Dent, Alexander. 2010. Flouting the Elmo Necessity and Denying the Local Roots of Interpretation: "Anthropology's" Quarrel with ACTA and Authoritarian IP Regimes. PIJIP Research Paper no. 3. American University Washington College of Law, Washington, DC.

This Article is brought to you for free and open access by the Program on Information Justice and Intellectual Property and Technology, Law, & Security Program at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Joint PIJIP/TLS Research Paper Series by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact [DCRepository@wcl.american.edu](mailto:DCRepository@wcl.american.edu).

FLOUTING THE ELMO NECESSITY AND  
DENYING THE LOCAL ROOTS OF  
INTERPRETATION:  
“ANTHROPOLOGY’S” QUARREL WITH ACTA AND  
AUTHORITARIAN IP REGIMES

*Alexander S. Dent*

ABSTRACT

This paper uses an anthropological definition of culture to examine the intensification of intellectual property policing, coupled with an expansion of its definition. These are ACTA’s aims. I argue that acts of sharing lie at the root of communication; humans must share in order to learn. Furthermore, symbols change their meaning as they circulate in different cultural contexts. Therefore, in denying the fundamental importance of sharing and local interpretation, ACTA will not only fail spectacularly as a policy document. It will also fuel a “war” on file-sharers, users of generic medicines, and manufacturers, sellers, and buyers of imitative goods and services – in sum, a large portion of the world’s population. This avoidable war will be costly, and it will be detrimental to public interests and global health.

<b>ABSTRACT .....</b>	<b>1</b>
I. THE QUOTIDIAN EFFECTS OF ACTA.....	2
II. CULTURE AS DIFFERENCE .....	4
A. <i>The Elmo Necessity: Sharing</i> .....	6
B. <i>The Necessity of the Local: Circulation</i> .....	8
III. AUTHORITARIANISM AND RIGID IP .....	12

### I. THE QUOTIDIAN EFFECTS OF ACTA

If approaches to intellectual property (IP) continue to become more expansive and corporate-controlled, there may come a day when speakers of English will have to buy “English 2.0” or the like in order to talk and write. This is lawyer James Boyle’s contention in *The Public Domain: Enclosing the Commons of the Mind* (2008). With this metaphor, Boyle addresses much more than language. He argues that the concept of property applies to a broader and broader range of expressive and material culture. He also suggests that the strict policing of the boundaries of IP will soon require permissions and payments for resources we currently share with one another without a thought.

The present essay argues that should it pass, the Anti-Counterfeiting Trade Agreement (ACTA) will take us several steps closer to the fateful day Boyle anticipates. It therefore targets ACTA as a policy document. However, I am using ACTA as a way to discuss current approaches to “property” in the boardrooms of Europe, North America, and Japan. These are based on similar logic to that which underlies the United States “Special 301” process of putting developing countries on punitive “watch lists” for ostensible violations of IP law. This way of thinking, evidenced by corporations and the legal and governmental apparati that support them, clearly shows that there has been a cumulative and strategic loosening of the definition of IP, together with a ramping-up of its policing. I approach these phenomena as an anthropologist who has been doing research on language, media, and IP in the United States and Brazil for the last twelve years. I therefore look at ACTA from a cultural perspective, which elucidates some of the harm that the treaty will do from a quotidian standpoint rather than the more common legal, economic, and policy points of view. How, I ask, will the kinds of thinking *behind* ACTA shape the

way human beings reason, talk to each other, and frame their creative endeavors?

First, I will outline the treaty for those who have no knowledge of it, but, in so doing, orient those who *do* understand its current draft to my particular approach. ACTA purports to be a trade treaty, proposed by appointed trade-representatives of Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand, the Republic of Korea, Singapore, Switzerland and the United States. Its primary purpose is to stamp out what its framers feel is the alarming growth of what they call “piracy” and “counterfeiting” (which we should refer to using the more precise descriptor “unauthorized use”). Its meetings took place clandestinely for two years before considerable public pressure resulted in the release of the document in April of 2010. An ensuing outcry about the nature and scope of the treaty has, of this writing, yielded a single opportunity for public questions in late June of 2010. However, when a team of scholars, lawyers and activists asked questions of the ACTA organizers at this short hearing they were often dismissed, and in some cases, their questions were even treated with disdain. The clandestine nature of the process together with the unwitting complicity of the news media means that there has been alarmingly little written about ACTA. ACTA’s unelected framers sidestep existing international organizations that currently govern IP such as the World Trade Organization, the World Intellectual Property Organization, and the United Nations, all of them accountable to diverse international and national communities—some even mildly accountable to public interest groups. All of this leads us to conclude that ACTA is the product of a closed process, carried out in an undemocratic fashion, by a group of actors with highly specialized interests. These actors nonetheless have considerable power to impose those interests on a large portion of the world’s population. (For a critical analysis of the treaty see: <http://www.wcl.american.edu/pijip/go/acta-communicue>).

Three important aspects of the treaty bear underlining for the purposes of the present essay:

1. ACTA vastly simplifies current legal and governmental definitions of IP. It does so by implicitly collapsing the distinctions between copyright, trademark, patent, and brand. It thus enables a uniform approach to policing perceived violations of laws which IP experts have traditionally viewed as separate.
2. At the same time as ACTA loosens the definition of IP, it considerably augments the harshness and rapidity with which

violations are to be handled. For example, medicines such as those sent to Africa to combat HIV, may now be confiscated in transit. A second important example is that internet service providers may well be encouraged to gather information on their clients, cutting off broadband access for “violations” of downloading rules. There are other borderline-totalitarian aspects of the treaty’s policing proposals which space prevents mentioning here (once again, look at the link above). It is, however, important to point out that the consumer-protection and exceptions clauses customary for such a wide-reaching treaty are simply missing from ACTA; there are few recourses written into the document for actors or institutions who consider that ACTA’s principles overstep, or have been mistakenly applied.

3. ACTA seeks to circumvent local (in many cases, national) practices for handling the production and consumption of goods and services. It also pays no attention to culturally specific ways of addressing “the public good.” Thus, “the public good” proposed by the unelected representatives negotiating ACTA is decidedly *not* the public good of “BRIC” countries—Brazil, Russia, India, and China—a point that trade representatives from these nations have made vocally. This is surely no coincidence, since ACTA’s framers pointedly exclude “developing” nations from the treaty’s continuing composition.

With this contextual material in mind, we are now in a position to embark on the major question of this paper. How does ACTA, and the kind of thinking it represents, bring us closer to a world in which we will have to pay just to talk, write, and possibly even think?

## II. CULTURE AS DIFFERENCE

“Culture” is a human cognitive faculty that is locally configured.<sup>1</sup> In more detail, culture is the specific means by which a particular group of human beings interprets and shapes the world around it. As such, culture may not be explained simply in terms of overarching human drives such as “profit,” “politics,” and “love,” the way it is in economics, political science, and psychology. Anthropology argues that needs are *locally* configured. Groups of people employ different—often *radically* different—ways of making sense of their surroundings, fashioning them into things which they find “useful” by exchanging thoughts and objects

with one another.

I will say more about culture shortly, but for the moment, two examples from the anthropological analysis of language illustrate the broad importance of the concept.<sup>2</sup> The Hanunóo of the Phillipines have no word for “color.” What they have are four ways of characterizing what *we*, in English, think of as color: relative lightness, relative darkness, relative presence of red, and relative presence of green. However, as tempting as it might be to conclude that they simply divide the visible spectrum in four, while we would divide it into a rainbow (of seven colors), there is a catch. When pressed by anthropologists to discuss what *we* would call color, for which, recall, they have no term, the Hanunóo include features like freshness, durability, shininess, and hardness. Their difference in this cannot be reduced to a problem of translation. They are not confused when they answer. The details of their “color” system are difficult for us to grasp because they lie outside of our way of ascribing properties to objects, particularly the way we take chromatic features for granted. The point is that the Hanunóo’s way of ascribing properties to objects is different from ours, and therefore, the world-view of a Hanunóo is bound to be at least somewhat different from the world-view of a speaker of English, French, or Mandarin Chinese.

A second example from speakers of Yucatec Maya, in Guatemala clarifies this point further.<sup>3</sup> When speakers of Yucatec refer to objects, the first thing their language forces them to attend to is the *substance* that the object is made out of. We speakers of English see, for example, a table that may be made out of wood, metal, glass, plastic, or some combination of these. Speakers of Yucatec Maya see some wood that *happens* to be shaped like a table. This means that speakers of this Mayan language attend to substances more readily than we do. We are more prone to think first and foremost about shapes and function. For us, it is simply a table that *happens to be* made out of wood. For speakers of Yucatec, it is some wood *shaped like* a table.

The differences illustrated by an anthropological analysis of language might seem trivial, but they are not. Anyone can tell you this who has tried to take the foreign language she learned in the classroom and put it to use in the context in which the language is actually spoken on a daily basis. Differences are complex, important, and, as we learn quickly whenever we travel, socially consequential.<sup>4</sup> Linguistic differences are often immense, even in languages that are much closer to English than Hanunóo and Yucatec Maya. Notice, for instance, what happens when you err in ascribing “tu” in French to someone who ought to have been

referred to with “vous.” The same applies to the distinction between “tu” and “usted” in Spanish. The consequences may well be offense, hurt feelings, or dismissal. Anthropology is concerned with understanding how these kinds of differences shape daily life in significant ways. And this idea is at odds with the universalizing principles at the root of most other disciplines in the social sciences. In short, anthropology is the last bastion of difference. Anthropology’s fundamental concern with the meaning of our differences facilitates the following two points about ACTA.

A. *The Elmo Necessity: Sharing*

One way to simplify the concept of culture is to conceive of it as a collection of localized resources and processes upon which people draw in their day-to-day affairs. But culture is not just a toolbox filled with symbolic objects. Rather, culture is a practice that is in constant motion, a productive capacity and tendency that arises from the fact that human beings are inevitably social creatures. Culture is something that we *do*, but, crucially, it is something that we do through extremely quick processes of sharing. Another example from language illustrates this point. In order for a speaker of a given language to be considered competent in that language, she must be able to master a series of overlapping domains, minimally: phonology, semantics, syntax, and pragmatics. In less technical language, each speaker must know how to use her lungs, tongue, soft-palate, lips, etc. to make sounds that other users of her language will recognize as meaningful. She must also know the meanings of individual words. She should understand how to *combine* words to make full utterances. And she ought to know the appropriate ways of *using* all these resources simultaneously to carry out concrete tasks in her life, such as ordering a cup of coffee (perhaps using an odd Italianate lexicon), sentencing a convicted prisoner to death by firing squad, promising to be true in marriage, or telling a good joke.

In order for this hypothetical speaker to become competent, she must continually share with other speakers of her language, and they must share with her. This is a necessity for all language-users; it is not discretionary. She borrows sounds, words, grammatical processes, and ways of saying things. Indeed, the very process of language learning itself may be conceived of as a process of concerted borrowing, where children are encouraged to “pick up” the expressions of their parents and guardians. And we should note that this is not a controversial bit of socialist dogma. It is an accepted principle of child-language socialization under a variety of

forms of capitalism. For instance, there is widespread acceptance of the importance of this idea in children's television programs. Note "Elmo's Song" from the popular Sesame Street show, in which a carefree furry red monster encourages his friends Big Bird and Snuffleupagus to "appropriate" his song, substituting their own names for his in its title; when they admire his creation, and wish they had thought of doing something like it, he simply tells them to make it their own by singing it *not* as he has done (as *Elmo's* song) but as "Big Bird's Song," or "Snuffy's Song." No need to be jealous—just make it yours. This Sesame Street sequence ends when the music stops, and Elmo goes off in search of others to whom he can *give* his song (the "source" of this segment is not cited here, because Elmo would want it that way). On a more strictly academic note, consider the work of Mikhail Bakhtin (1895-1975), a Russian philosopher of language whose ideas have been used extensively by anthropologists (and who will reappear in the conclusion, below). Bakhtin explained the Elmo Necessity this way; he proposed that our words are never wholly our own; they have always spent time in other people's mouths (1981).

The point is that the very process by which human beings live in the world requires continual sharing. This process has, in the discipline of linguistic anthropology, been referred to with the technical-sounding term "inter-discursivity" (Agha 2005). This term simply sums up what I've been saying: that discourse, our day-to-day communications, rely not only on our *ability* to share with one another quickly and seamlessly, but on the fundamental *necessity* of doing so. We must lend and borrow quickly in order to exist in the world. Otherwise, we would never come to know the meaning and appropriate placement of words like "otherwise." We are all Elmo, Big Bird, and Snuffy, *all* the time.

Hopefully, the impact of this insight on ACTA and its incumbent ideas is already beginning to emerge. But in case it is not already evident, I will be more explicit. Hyper-strict IP regimes that define most expressive and material culture as "property" encroach on this fundamentally human process. They seek to insert into human life a check or tick—a moment in which each communicator must ask himself: "Who *owns* this? Whose permission must I ask in order to do what I am about to do, or say what I am about to say?" What I call the solidification of IP regimes that ACTA represents thus puts a kind of stutter into our speaking, and a filter into our listening. In expanding the definition of IP, ACTA pushes this tendency further and promises to naturalize it in a broader and broader range of situations. It is already there every time we cross a border, turn on our computer, or listen to songs and speeches. My point is that with the expansion of IP regimes, it is going to go further. And with its progress, we

are increasingly being asked to carry a fearful vigilance with respect to the provenance of our thoughts and doings. Imagine a world in which we must footnote every word we use, or, if this seems to push things too far, in which we must footnote a large number of the expressions we currently take for granted (expressions like “take for granted,” for instance). In a different mode, imagine a world in which Universal Music Inc. requires payment every time a song-writer chooses to compose in the key of C. We will all have to start talking, writing, thinking, and singing much more slowly, and in a more limited way.

*B. The Necessity of the Local: Circulation*

So far, we have examined the way in which the concept of culture helps us to see the flawed logic at the root of runaway IP policies and laws broadly speaking. Now, we move on to a more difficult argument that more directly engages with ACTA itself.

Something quite specific has frustrated ACTA’s framers and the companies they represent, and has led directly to ACTA. That frustration has to do with the way in which things they perceive to be pirated or counterfeited can be manufactured and then travel to their intended destinations without being stopped. This takes place because the local laws that apply to commodities *differ*, a factor that becomes particularly pronounced when commodities or services *move* from one place to another. A given good or service might be conceivable as illegal in France, but it is not necessarily illegal sitting in a port in São Paulo. An HIV-controlling medicine on its way to an African nation, but manufactured in circumvention of certain American patent laws, can be legal in one place, and illegal in another. Under current trade laws, that medicine gets to its destination and assists with combating a worldwide epidemic. ACTA’s framers do not like this, though they might, if pressed, accept that combating an epidemic is a good thing. They are upset that that medicine arrived because it reduced the patent-holder’s profits.

By aiming to stamp out this sort of thing, ACTA attempts to universalize the principles by which something can be defined as counterfeited or pirated. The trade representatives of the interests involved want certain kinds of goods and services to become *universally illegal*. This would theoretically close the existing pathways that have allowed life-saving medicines to be cheaply manufactured and moved, for instance. And it would foreclose many anonymous and unregulated aspects of the Internet as well, as internet service providers receive pressure to gather information on clients, cutting off broadband access as punishment for downloading

“illegal content.”<sup>5</sup> The hope is that “counterfeited” or “pirated” goods can no longer move with impunity. And the definitions of “counterfeited” and “pirated” will be much broader. Whether applied to a song or a pill, the given commodity or practice will now be conceived of as “pirated” *everywhere*. Moreover, it is “pirated” or “counterfeited” *while it is in motion*, not just when it stops somewhere that happens to have laws that are hostile *to it*. In ACTA, what we have, therefore, is a peremptory interpretive template to be applied to any and all goods and services, all the time. We can therefore see that ACTA is an attempt to eradicate what anthropologists have spent a great deal of time not only documenting, but taking seriously as a part of human nature: that groups of people interpret symbols and actions differently.

For those who may doubt the global effects of ACTA, because it is merely one trade treaty which will not be ratified by many nations, we need to explore the issue further. Let us ask the question: Why will ACTA’s influence be profound and global, not contained within the countries that framed it? Here, we need to follow our anthropological insight that given meanings are inevitably local in their configuration. Those effects will differ from context to context. Let us look at the example of lawmakers in developing countries within this framework. This is similar to, but a good deal more complicated than, our discussion of Elmo.

We know that lawmakers in developing countries have shown themselves prone to absorb aspects of policies like ACTA into their local legal structures. They do this for two reasons. The first is that these policies seem attractive as “what the developed countries are doing these days”; if the developed countries are doing it, it must be intelligent, the fallacy goes. However, developing countries also do this because large countries, such as the United States, classify a nation as being “in violation” of certain trade principles and place it on a “watch-list” if it does not comply with such policies. Being on this list can result in sanctions, tariffs, and other kinds of penalties and negative consequences. Those seeking historical proof of the fact that both of these paths lead to the absorption, in developing countries, of sweeping policy documents framed in the metropole, needn’t look far. This is precisely what happened with the Digital Millennium Copyright Act (DMCA), which was penned in the United States by the likes of the RIAA (the Recording Industry Association of America) but ended up being absorbed by countless developing nations, often leading to policies that were scandalously ill-suited to development. And we should note, returning more specifically to ACTA, that this absorption is happening already in Africa and South America, where draconian IP regimes are being adopted in some countries. We may

therefore conclude that in one sense, ACTA's reach will be wide.

However, a second, and much more important point also emerges. The concept of culture shows us that ACTA's attempt to erase the efficacy of local context can only ever be partial, uneven, and inconsistent. Its attempt to universalize the meanings of goods and services *can never work* in the way it is intended to precisely because groups of human beings create difference in processes of circulation. Above, I have described this in terms of culture, but allow me to briefly mobilize anthropology's other master-trope, evolution, before returning to culture once more. From an evolutionary perspective, humans are difference-creating organisms bar none. It's what we *do*. Organisms with extremely strict systems tend to die out, but human beings continue to thrive through dramatic social and climatic changes because we are always shifting, moving and changing. Anthropological studies of language (expressive culture) and objects (material culture) point out that the meanings of objects and words simply *have to change* as they circulate; it is an inherent property of human communication. Once again, as with the Elmo Necessity, this is not discretionary, but inevitable.

Permit two illustrations of this point. Consider the example of a particular kind of tropical commodity: the pineapple. In Central America or the Caribbean, a pineapple is a crop grown for export—a common though tasty food that is mass-produced largely for foreign markets, cheaply, and in a way that is managed by large multi-nationals such as Dole. This carries with it local ambiguities. Yes, Dole has brought employment. But it has also been harsh, at times, in its policing of labor rules, and has even attempted to co-opt entire Central American political systems. These characteristics become part of the symbolic makeup of “the pineapple” in places where it is grown, which are localized interpretations of the pineapple as a thing. Now, we make a leap. A long way from its place of origin, in my local Safeway in Washington, DC, a pineapple is a somewhat exotic tropical fruit that my two-year-old son devours at an alarming rate. And, further, given that my particular Safeway has a wildly erratic produce department, the quality of its pineapples also varies drastically. In the highly localized environment of my home, located in the Columbia Heights neighborhood of Washington, DC, the pineapple is therefore a fruit of tremendously uneven quality and high status that is stripped entirely of the political associations it might have held closer to where it was produced.<sup>6</sup> If I pull freshly cut pineapple out of the fridge at the correct moment, calm prevails. If I fail to do so, the consequences may be dire, and the tantrum explosive. The point across these two sites is that a pineapple is never just a pineapple. A simultaneously clearer and more

extreme example from language further illustrates this point about the variation that context brings. The use of the racial epithet “n \_ \_ g \_ r” to describe a person of African descent means radically different things when it emanates from “black” or “white” mouths. More specifically, when a white university president uses the “n” word in a speech it means something quite different than when rapper Fifty Cent uses it in a song. There’s just no way around it. This word has a variety of meanings that depend entirely on the who, what, where, when, and why of its use.

At the root of the anthropology not just of language but of all material and expressive culture, therefore, is the notion that local groups decide the meanings of things *in context*. And, simply put, ACTA and the kind of rigid and poorly conceived IP regime for which it stands, seeks to erase contexts, creating one overarching paradigm for interpreting not just commodities, but also copyrightable artistic and expressive productions. It is an attempt at communicative universality. So, from this anthropological point of view, we should note that ACTA has been penned by people who simply don’t understand how human beings function on an empirical level.

Why is this important? It leads to an unsettling conclusion about the actual effect ACTA will have. What ACTA will do is create a chaotic patchwork, where policies and laws that impose ACTA’s universalized demands may be put into place. However, those who put these into practice and police them on the ground will have to negotiate with localized criticisms of: the high price of international brands, the way foreign companies who sell products in developing economies often do not reinvest their profits in those markets, and the ways in which the costs of branded, trademarked, copyrighted, and patented goods are not calibrated for sale in developing markets, where wages are lower (in other words, a “legitimate” CD takes up a much higher percentage of an average income in Brazil than it does in Canada).

This is therefore *not* a simplistic argument that ACTA represents the imposition of “foreign” laws on developing contexts, and that that is the reason it will fail. To illustrate, it is certainly true that the fight to impose ACTA’s universalist interpretations will prove violent and expensive at times. This will not just be the case in the developing world; there will be plenty of push-back in the very countries that are framing the treaty, and indeed, there already is. But my more important point is that something else will happen in the developing world. There, in places like Africa and South America, ACTA will find not only passionate opposition, but, perhaps paradoxically, passionate support. And these supporters will find highly *localized* reasons for liking what ACTA has to say. In Brazil, for instance, proponents of ACTA-like IP regimes are drawing on a long

historical tradition. Brazil frequently considers itself to be a mecca of cultural mixture. However, there are also longstanding fears associated with *too much* mixture. And it is these fears of over-mixing that are being channeled by ACTA's supporters, who perceive "piracy" and "counterfeiting" as evidence of unchecked and unhealthy symbolic interbreeding. What this specific case reveals is that the imposition of these largely American, European, and Japanese corporate IP paradigms onto the rest of the world will take a variety of different shapes, aggravating pre-existing conflicts, and creating uneven approaches. They will have a tremendous influence on policy and law, and a more circumscribed influence on policing and local thought, which are rooted in localized critiques of IP and its results. The consequent incongruity will create new tensions and inflame old ones.

### III. AUTHORITARIANISM AND RIGID IP

My point is not just that we have seen this kind of thing before, as the work of historian Adrian Johns has so clearly showed (2010). Rather, the anthropological argument I am making here is that human beings manufacture difference in processes of exchanging thoughts and ideas. ACTA seeks to erase that difference. ACTA therefore cannot work, even according to the stated and unstated desires of its framers. It will generate expense and violence, and it will entirely fail to universalize global approaches to "property."

In research I am currently carrying out in Brazil I have found that internationally funded NGOs that police infractions of IP are bringing increasing awareness of IP and its "violations" to the public sector. They are doing this by pressuring local police forces to engage in punitive raids of, for example, illegal DVD and CD stands. They are also running anti-piracy ads, printing anti-piracy comic books that teach kids that *The Elmo Necessity* is, in fact, immoral, pressing the news media to run stories on piratical ties to "organized crime," and aggressively lobbying at the federal level for policy changes that will make punishments for counterfeiting easier to hand out and worse to receive. The result of this array of actions, many of them paid for by the likes of the Motion Picture Association of America, the RIAA, and the International Chamber of Commerce, is a vastly increased number of punitive raids on informal economies. There is, as of yet, no evidence whatsoever that it has slowed rates of "piracy" one jot. But what is taking place as a result of these actions is that copying, and most "informal" economic activity, is heading straight into the hands of organized crime apparati that were established in the seventies and eighties

to handle drugs, prostitution, and arms. This is making informal economic activity, which is a tremendously important source of employment in countries such as Brazil, much more dangerous for all involved (while, incidentally, making it harder to study).

All of this means that a new kind of war has begun, and it is a war that resembles the war on drugs in terms of the kinds of rhetorical strategies that it employs. Because of the impossibility of universalizing the interpretation of things and ideas, the new “war” on piracy promises to be an expensive and spectacular failure. My reasons for this belief stem from the anthropological concept of culture. ACTA’s universalizations will insert into the human communicative process (or Elmo Necessity) a stutter, tick, or check. Second, ACTA will unsuccessfully attempt to erase the significance of local context in the production, circulation, and interpretation of goods and services. But in so doing, ACTA will dramatically *succeed* on another front; it will aggravate existing inequalities and conflicts.

To elucidate the significance of these two points in conclusion, I return to Mikhail Bakhtin, who was imprisoned several times in Stalinist Russia for arguing against the totalitarian use of language. Bakhtin called the kinds of policies I have described here “authoritative discourse,” by which he meant discourse that attempts to tightly control its own interpretation, as well as the incumbent discourse of others. His terminology tips us off to the authoritarian linguistic impulses behind trade treaties such as ACTA. We may also recognize such approaches in the “Newspeak” of George Orwell’s dystopian novel *1984*, for instance. At one point, a character in Orwell’s prescient book wonders at the “beauty” inherent in the destruction of words. ACTA’s framers, and those who would support them around the world, would surely feel that the destruction of contexts in which a “counterfeit” HIV drug might be read as a “life-saving and necessary measure” is also, in some sense, “beautiful.”

---

<sup>1</sup> My definition draws upon the work of six scholars in particular: Benjamin Lee Whorf (1956), Marshall Sahlins (1976; 1985; 1998), Terence Turner (1979; 1986; 1992), Micheal Silverstein (1981; 1981; 1993), and Jean and John Comaroff (1991; 1992; 1992). There has been considerable debate within anthropology as to the meaning of the term culture, some of it productive of theoretical innovation (see, for instance, some of the contributions to Clifford and Marcus 1986).

<sup>2</sup> The majority of this paragraph draws heavily on the work of Conklin (1964).

<sup>3</sup> This paragraph draws on the work of Gaskins and Lucy (2001; 2003).

<sup>4</sup> In a non-specialist mode, humorist David Sedaris’s book *Me Talk Pretty One Day* analyzes some of the pratfalls that take place as he learns French (2001).

<sup>5</sup> Such laws are already on the books in France and England, though they are so problematic from the perspective of freedom of speech that no one has yet had the temerity

to enforce them.

<sup>6</sup> For a suggestive attempt to trace the history and different meanings of a different tropical commodity, sugar, see anthropologist Sidney Mintz's *Sweetness and Power* (1986).

## REFERENCES

- Agha, A. (2005). "Introduction: Semiosis across Encounters." Journal of Linguistic Anthropology **15**(1): 1-5.
- Bakhtin, M. M. (1981). Discourse in the Novel. The Dialogic Imagination. M. Holquist. Austin, TX, The University of Texas Press: 259-423.
- Boyle, J. (2008). The Public Domain: Enclosing the Commons of the Mind. New Haven, Yale University Press.
- Clifford, J. and G. Marcus, Eds. (1986). Writing Culture: The Poetics and Politics of Ethnography. Berkeley, CA, University of California Press.
- Comaroff, J. (1992). Of Totemism and Ethnicity. Ethnography and the Historical Imagination. J. Comaroff and J. Comaroff. Boulder, CO: 49-67.
- Comaroff, J. and J. Comaroff (1991). Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa. Chicago, University of Chicago Press.
- Comaroff, J. and J. Comaroff (1992). Ethnography and the Historical Imagination. Ethnography and the Historical Imagination. J. Comaroff and J. Comaroff. Boulder, CO: 3-48.
- Conklin, H. (1964). Hunanoo Color Categories. Language in Culture and Society. D. Hymes. New York, Harper & Row: 189-192.
- Johns, A. (2010). Piracy: The Intellectual Property Wars from Gutenberg to Gates. Chicago, University of Chicago Press.
- Lucy, J. and S. Gaskins (2001). Grammatical categories and the development of classification preferences: A comparative approach. Language Acquisition and Conceptual Development. S. Levinson and M. Bowerman. Cambridge, UK, Cambridge University Press: 257-283.
- Lucy, J. and S. Gaskins (2003). Interaction of language type and referent type in the development of nonverbal classification preferences. Language in Mind: Advances in the Study of Language and Thought. D. Gentner and S. Goldin-Meado. Cambridge, MA, MIT Press: 465-492.
- Mintz, S. (1986). Sweetness and Power: The Place of Sugar in Modern History. New York, Penguin Classics.
- Sahlins, M. (1976). Culture and Practical Reason. Chicago, University of Chicago Press.
- Sahlins, M. (1985). Islands of History. Chicago, University of Chicago Press.
- Sahlins, M. (1998). Two or Three Things That I Know About Culture. Huxley Lecture, University College, London.
- Sedaris, D. (2001). Me Talk Pretty One Day, Back Bay Books.
- Silverstein, M. (1981). "The Limits of Awareness." Working Papers in Sociolinguistics **84**: 31.
- Silverstein, M. (1981). Metaforces of power in traditional oratory, Yale University.
- Silverstein, M. (1993). Metapragmatic Force and Metapragmatic Function. Reflexive Language: Reported Speech and Metapragmatics. J. Lucy. Cambridge, Cambridge University Press: 33-58.

- Turner, T. (1979). The Ge and Bororo Societies as Dialectical Systems: A General Model. Dialectical Societies: The Gê and Bororo of Central Brazil. D. Maybury-Lewis. Cambridge, MA, Harvard University Press: 147-178.
- Turner, T. (1986). "Production, Exploitation and Social Consciousness in the "Peripheral Situation"." Social Analysis **August**(19): 91-119.
- Turner, T. (1992). "Defiant Images." Anthropology Today **8**(6): 5-16.
- Whorf, B. L. (1956). The Relation of Habitual Thought and Behavior to Language. Language, Thought, and Reality. J. B. Carroll. Cambridge, MA, The MIT Press: 134-160.